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In re Application of :
Mockry et al. :
Application No. 09/878,860 : DECISION ON PETITION
Filed: May 10, 2002 :
Attorney Docket Number: :
530.005PA :

OFFICE OF PETITIONS

This is a decision on the petition filed May 10, 2002, requesting that the above-identified application be accorded a filing date of June 9, 2001. The petition avers that the return-receipt postcard evinces receipt of the application papers. Accordingly, the petition will be decided under 37 CFR 1.53.

The petition is dismissed.

Background

The application was deposited on June 9, 2001. However, on March 15, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice of Incomplete Nonprovisional Application (hereinafter "Notice"), stating that a filing date had not been accorded the application because the specification did not include a written description of the invention.

In response, Petitioner files the instant petition, along with a copy of the postcard receipt filed with the instant application, and a specification containing pages 1 and 2. Petitioner avers that the postcard acknowledges receipt of the complete specification.

The instant petition

The best evidence of what was filed on June 9, 2001, is applicant's postcard receipt. Unfortunately, Petitioner's postcard receipt does not identify the number of pages filed in the specification, but only notes that "4 original copies of provisional" were filed. Thus, applicant's postcard receipt fails to demonstrate that a written description of the invention was present upon filing the instant application. The MPEP provides that

[t]he postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard 'a complete application' or 'patent application' will not serve as a proper receipt for each of the required components of an application

(e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee[] or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portions of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard.

MPEP § 503

Conclusion

If a written description of the invention (pages 1 and 2 of the specification) was not present on the June 9, 2001 filing date, it cannot be considered a part of the original disclosure of the application. Petitioner has failed to satisfactorily demonstrate that a written description of the invention was present in the Office on June 9, 2001. Therefore, the application cannot be accorded the June 9, 2001 filing date with a written description of the invention, as a part of the original disclosure. The issue of new matter is one appropriately addressed by the primary examiner during prosecution of the application after the filing date of the application has been determined.

Accordingly, the filing date of the application is the date that the omitted pages were submitted, May 10, 2002.

The application is being returned to OIPE for further processing with a filing date of May 10, 2002, using the pages of specification filed on that date.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

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Conferee: Christina Donnell, Esq.